



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

TOBACCO TAX ACT

PLEASE NOTE

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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TOBACCO TAX ACT

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TOBACCO TAX ACT

CHAPTER T-3.11

1. Definitions

(1) In this Act

- (a) “**carrier**” means a carrier as defined in section 142 of the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5;
- (b) “**cigar**” means a cigar as defined in the *Excise Act* (Canada);
- (c) “**Commissioner**” means the Provincial Tax Commissioner as defined in the *Revenue Administration Act* R.S.P.E.I. 1988, Cap. R-13.2;
- (d) “**consumer**” means a person who, within the province, purchases tobacco
 - (i) for his or her own consumption, or for the consumption of other persons at the person’s expense, or
 - (ii) on behalf of, or as an agent for, a principal for consumption by the principal, or by other persons at the principal’s expense;
- (e) “**inspector**” means an inspector as defined in the *Revenue Administration Act*;
- (f) “**licensed manufacturer**” means a manufacturer who holds a valid manufacturer’s license issued under subsection 4(2);
- (g) “**licensed retail vendor**” means a retail vendor who holds a valid retail vendor’s license issued under subsection 4(2);
- (h) “**licensed wholesale vendor**” means a person who holds a valid wholesale vendor’s license issued under subsection 4(2);
- (i) “**manufacturer**” means a person who manufactures, fabricates or produces tobacco for distribution, sale or storage in Prince Edward Island;
- (j) “**manufacturer’s license**” means a manufacturer’s license issued under subsection 4(2);
- (k) “**marked tobacco**” means tobacco in a package that is marked in accordance with the regulations;
- (l) “**marking exemption permit**” means a marking exemption permit issued under subsection 4(2);
- (m) “**marking permit**” means a marking permit issued under subsection 4(2);
- (n) “**Minister**” means the Minister of Finance;
- (o) “**motor vehicle**” means a motor vehicle as defined in the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5 and includes a trailer;
- (p) “**package**” includes a carton, case, box, tin or other container that contains or is intended to contain tobacco;
- (q) “**person**” in addition to the meaning ascribed to it by the *Interpretation Act* R.S.P.E.I. 1988, Cap. I-8, includes a partnership, estate, trustee in bankruptcy, municipal

- corporation, an education authority and a board, commission, committee or authority established for public or local purposes;
- (r) “**retail sale**” means a sale of tobacco to a consumer for the purpose of consumption and not for resale;
 - (s) “**retail vendor**” means a person who, within the province, sells or offers to sell tobacco to a consumer;
 - (t) “**retail vendor’s license**” means a retail vendor’s license issued under subsection 4(2);
 - (u) “**tax**” means the tax imposed under this Act, and includes all penalties and interest that may be, or may have been, added to such tax pursuant to this Act or the *Revenue Administration Act*;
 - (v) repealed by 2010,c.29,s.1(a);
 - (w) “**tobacco**” means tobacco in any form in which tobacco is consumed, and includes snuff;
 - (w.1) “**tobacco markings**” means tobacco markings as defined by the regulations;
 - (x) “**trailer**” means a vehicle which has no motive power of its own and which is attached or intended to be attached to a motor vehicle upon a highway and includes a cargo container on or attached to a motor vehicle and a side car attached to a motor cycle;
 - (y) “**wholesale vendor**” means a person who sells or offers to sell tobacco for the purpose of resale;
 - (z) “**unmarked tobacco**” means tobacco that is in a package that is not marked in accordance with the regulations;
 - (aa) “**wholesale vendor’s license**” means a wholesale vendor’s license issued under subsection 4(2).

Amount of tobacco contained by a cigarette

- (2) For the purposes of this Act and the regulations, one cigarette is deemed to contain one gram of tobacco. 2007,c.19,s.1; 2010,c.31,s.3; 2010,c.29,s.1; 2012,c.17,s.2; 2012(2nd),c.22,s.27(2); 2015,c.28,s.3; 2016,c.6,s.134.

TAX ON CONSUMER

2. Liability

- (1) Every consumer of tobacco purchased at a retail sale in the province shall pay to the Minister, at the time of making the purchase, a tax at the following rate:
 - (a) 25 cents per cigarette purchased;
 - (b) 71.6% of the retail price of each cigar purchased;
 - (c) 21.5 cents on every gram or part thereof of tobacco purchased, other than cigarettes, tobacco sticks or cigars;
 - (d) 25 cents per tobacco stick purchased.

Computation to nearest cent

- (2) The tax payable under this Act shall be computed to the nearest cent, and one-half cent shall be rounded to one cent.



Minimum tax payable

- (3) The minimum tax payable on any tobacco purchased by a consumer shall be one cent. 2007, c.19, s.2; 2008, c.34, s.1; 2009, c.88, s.1; 2011, c.40, s.1; 2013, c.51, s.1; 2015, c.18, s.1.

3. Exceptions

A consumer is not liable to pay the tax in respect of the purchase of the following:

- (a) tobacco purchased for use as ships' stores when delivered by common carrier under bond or by a customs officer under convoy and only when exempted from customs duty under the Ships' Stores Regulations SOR/96-40 of the *Customs Tariff* (Canada) and the *Excise Tax Act* (Canada);
- (b) tobacco purchased in duty free stores for delivery or shipment to a destination outside the province in accordance with the Duty Free Shop Regulations SOR/86-1072 of the *Customs Act* (Canada). 2007, c.19, s.3.

LICENSES AND PERMITS**4. Application**

- (1) A person who wishes to obtain a wholesale vendor's license, a retail vendor's license, a manufacturer's license, a marking permit or a marking exemption permit shall
- (a) submit an application to the Commissioner for such license or permit in a form approved by the Commissioner;
- (b) pay the fee, if any, prescribed by the regulations for the type of license or permit that is the subject of the application;
- (c) if the applicant is a corporation, submit a copy of the applicant's certificate of incorporation; and
- (d) provide such other information as the Commissioner may request.

Issuance

- (2) The Commissioner may issue a wholesale vendor's license, a retail vendor's license, a manufacturer's license, a marking permit or a marking exemption permit to a person who applies for the license or permit in accordance with subsection (1), if the Commissioner is satisfied that the person meets the requirements of this Act and the regulations.

Terms and conditions

- (3) The Commissioner may, when issuing a license or permit to a person under subsection (2), impose such terms and conditions on the license or permit as the Commissioner considers appropriate.

Compliance with terms and conditions

- (4) Every person who holds a license or permit issued under subsection (2) shall comply with any terms and conditions imposed on the license or permit.

Transitional

- (5) A person who, immediately before the date this section comes into force, holds a valid wholesale vendor's license, a retail vendor's license or a marking permit issued under the *Health Tax Act* R.S.P.E.I. 1988, Cap. H-3, shall be deemed, as of the date this section comes into force, to have been issued such a license or permit under subsection (2), and such license

or permit shall expire one year after the date this section comes into force, unless sooner cancelled under this Act.

Idem

- (6) A person who, immediately before the date this section comes into force, holds a valid permit to stamp tobacco issued under the *Health Tax Act*, shall be deemed, as of the date this section comes into force, to have been issued a marking permit under subsection (2), and such permit shall expire one year after the date this section comes into force, unless sooner cancelled under this Act.

Expiry

- (7) Subject to subsections (5) and (6), a license or permit issued under subsection (2) expires as provided in the regulations, unless sooner cancelled under this Act.

Transfers and staff

- (8) A license or permit issued under subsection (2) is not transferable, and no person may act under it or rely on it other than
- (a) the person to whom it was issued; or
 - (b) an employee or agent of the person to whom it was issued.

False or misleading information

- (9) No person shall provide false or misleading information to the Commissioner in respect of the person's application for a license or permit under this section. *2007, c.19, s.4.*

5. Retail vendor's license - places of business to which it applies

- (1) Where the Commissioner issues a retail vendor's license to an applicant, the Commissioner shall
- (a) specify in the retail vendor's license the places of business to which the license applies and their addresses; and
 - (b) issue a copy of the retail vendor's license to the applicant for every place of business specified in the license.

Display

- (2) Every licensed retail vendor shall ensure that a copy of his or her retail vendor's license issued under clause (1)(b) is prominently displayed at every place of business specified in the license.

Amendment of license

- (3) Where a licensed retail vendor wishes to
- (a) change the address of his or her place of business; or
 - (b) sell or offer to sell tobacco at a new place of business,
- the licensed retail vendor may apply to the Commissioner in accordance with subsection 4(1) for an amended retail vendor's license that refers to the new address or new place of business.

Idem

- (4) The Commissioner may, on application by a licensed retail vendor pursuant to subsection (3), issue an amended retail vendor's license under subsection 4(2) to the licensed retail vendor. *2007, c.19, s.5.*



6. Bond

- (1) The Commissioner may require an applicant for a wholesale vendor's license to deposit with the Minister a bond in the form of cash or other security acceptable to the Commissioner.

Amount

- (2) The amount of any bond required by the Commissioner under subsection (1) shall be determined by the Commissioner, but shall not exceed an amount equal to six times the amount of the estimated tax that, in the opinion of the Commissioner, would normally be collected by the wholesale vendor each month under this Act, and in no case shall the bond be less than five thousand dollars.

Refusal of license

- (3) The Commissioner may refuse to issue a wholesale vendor's license to an applicant who fails to deposit with the Minister a bond required under subsection (1).

Application of bond

- (4) Where a licensed wholesale vendor has
- (a) deposited with the Minister a bond required under subsection (1); and
 - (b) has failed to collect or remit tax in accordance with this Act or the *Revenue Administration Act*,

the Commissioner may, after serving on the licensed wholesale vendor a written notice of the Commissioner's intention to do so, apply the bond in whole or in part to the amount that should have been collected or remitted by the licensed wholesale vendor as the amount due to Her Majesty in right of the province as of the date of the notice. *2007, c.19, s.6.*

7. Refusal

- (1) The Commissioner may refuse to issue a license or permit to an applicant under subsection 4(2), if, in the opinion of the Commissioner,
- (a) the applicant has been convicted of a violation of
 - (i) any provision of this Act or the *Revenue Administration Act*,
 - (ii) any provision relating to tobacco in any other Act of the Legislative Assembly or the Parliament of Canada, or
 - (iii) any provision relating to tobacco in any regulations made under this Act or the *Revenue Administration Act* or any other Act of the Legislative Assembly or the Parliament of Canada;
 - (b) the applicant has failed to comply with any of the terms and conditions imposed on a prior license or permit issued to the applicant under this Act or the *Health Tax Act* during the previous five years; or
 - (c) a prior license or permit issued to the applicant under this Act or the *Health Tax Act* during the previous five years was cancelled.

Notice of refusal

- (2) Where the Commissioner refuses, under subsection (1), to issue a license or permit to an applicant, the Commissioner shall serve on the applicant a written notice of the refusal setting out the reasons therefor. *2007, c.19, s.7.*

8. Suspensions and cancellations

- (1) The Commissioner may

- (a) suspend a license or permit issued under subsection 4(2) for such period of time as the Commissioner considers necessary; or
 - (b) cancel a license or permit issued under subsection 4(2),
- if, in the opinion of the Commissioner, the person holding the license or permit
- (c) has failed to comply with any provision of this Act or the *Revenue Administration Act* or any regulations thereof; or
 - (d) has been convicted of a violation of any provision relating to tobacco in any other Act of the Legislative Assembly or the Parliament of Canada, or in any regulation made under such an Act.

Notice of proposed suspension or cancellation

- (2) Where the Commissioner suspends or cancels a license or permit under subsection (1), the Commissioner shall serve on the person who holds the license or permit a written notice of the suspension or cancellation setting out the reasons therefor. *2007,c.19,s.8.*

9. Request to show cause

- (1) A person who is aggrieved by
 - (a) a refusal to issue a license or a permit to the person; or
 - (b) a suspension or cancellation of a license or permit held by the person,may, within 20 days after the date that the person was served with a written notice of the decision, serve on the Commissioner a written request to appear before the Commissioner to show cause as to why the license or permit should not be refused, suspended or cancelled, as the case may be.

Hearing and decision

- (2) The Commissioner shall, within 10 days after the date that a written request is served on the Commissioner in accordance with subsection (1),
 - (a) give the person who served the written request an opportunity to be heard in respect of the matter; and
 - (b) decide the matter,
 - (i) in the case of a refusal to issue a license or permit to an applicant, by
 - (A) confirming the refusal, or
 - (B) issuing the license or permit to the applicant under subsection 4(2), and
 - (ii) in the case of a suspension or cancellation of a license or permit, by
 - (A) confirming the suspension or cancellation of the license or permit, or
 - (B) reversing the suspension or cancellation on such terms and conditions as the Commissioner considers appropriate.

Notice of decision

- (3) The Commissioner shall serve on the person who made the written request to appear before the Commissioner a written notice of the Commissioner's decision under subsection (2) setting out the reasons therefor. *2007,c.19,s.9.*



10. Appeal

- (1) A person who made a written request to appear before the Commissioner under section 9 may appeal the Commissioner's decision in respect of the request to a judge of the Supreme Court by filing a notice of appeal with the court and serving a copy of it on the Commissioner no later than 30 days after the date that the written notice of the Commissioner's decision was served on the person.

Rehearing and further evidence

- (2) The judge hearing an appeal may rehear the matter and receive and consider any further evidence the judge considers relevant.

Decision

- (3) After hearing the appeal, the judge shall decide the appeal by
- (a) dismissing the appeal; or
 - (b) allowing the appeal and ordering that
 - (i) the license or permit that is the subject of the appeal be issued, if it has been refused,
 - (ii) any suspension of the license or permit that is the subject of the appeal be removed, if one has been imposed, or
 - (iii) the license or permit that is the subject of the appeal be reinstated, if it has been revoked, subject to such conditions as the judge considers appropriate.
- 2007, c.19, s.10.*

ABSORPTION OF TAX**11. Absorption of tax**

No retail vendor shall advertise, hold out or state to any person, directly or indirectly, that the tax or any part thereof imposed by this Act will be assumed or absorbed by the retail vendor or that it will not be considered as an element in the price to the consumer, or if added, that it or any part thereof will be refunded. *2007, c.19, s.11.*

COLLECTION**12. Retail vendor to collect tax from consumers**

- (1) Every licensed retail vendor shall act as an agent of the Minister and in that capacity shall
- (a) collect the tax from the consumer; and
 - (b) where subsection (2) applies, remit the tax to the wholesale vendor.

Wholesale vendor to collect tax from retail vendor

- (2) Where a retail vendor buys tobacco from a wholesale vendor, the wholesale vendor shall act as an agent of the Minister and in that capacity shall collect the tax from the retail vendor at the time of purchase except where the retail vendor becomes insolvent. *2007, c.19, s.12.*

PROHIBITIONS

13. Sale for resale by licensed wholesale vendor

- (1) No person shall sell or offer to sell tobacco in the province for resale unless the person is a licensed wholesale vendor.

Eligible purchasers

- (2) No wholesale vendor shall sell or offer to sell tobacco in the province to a person unless the person is a licensed wholesale vendor or a licensed retail vendor.

Purchases from licensed wholesale vendor

- (3) No licensed retail vendor shall purchase or offer to purchase tobacco from a person unless the person is a licensed wholesale vendor. *2007,c.19,s.13.*

14. Retail sale by licensed retail vendor

- (1) No person shall sell or offer to sell tobacco in the province at a retail sale unless the person is a licensed retail vendor.

Sale of tobacco at a location not specified on license

- (2) No licensed retail vendor shall sell or offer to sell tobacco at a location in the province other than one specified on his or her retail vendor's license.

Possession by retail vendor

- (3) No licensed retail vendor shall be in possession of tobacco other than tobacco that the licensed retail vendor has purchased from a licensed wholesale vendor. *2007,c.19,s.14.*

15. Purchase of tobacco by a consumer

No consumer shall purchase tobacco in the province from a person other than a licensed retail vendor unless no tax is payable under this Act in respect of the purchase. *2007,c.19,s.15.*

16. Possession of tobacco by a consumer

- (1) No consumer shall have in his or her possession tobacco
- (a) that has been purchased from a person other than a licensed retail vendor; or
 - (b) on which tax has not been paid, unless no tax is payable under this Act in respect of the purchase of that tobacco.

Maximum amount

- (2) No person shall have in his or her possession more than one thousand grams of tobacco at any one time, unless
- (a) the person
 - (i) is a licensed wholesale vendor,
 - (ii) is a licensed retail vendor,
 - (iii) holds a valid marking permit, or
 - (iv) holds a valid marking exemption permit; or
 - (b) no tax is payable under this Act in respect of the purchase of that tobacco. *2007,c.19,s.16.*



17. Consignment

No person shall consign tobacco for resale or for sale at a retail sale, unless the tax has been paid. *2007,c.19,s.17.*

18. Transportation - bill of lading requirement

No carrier shall permit a driver to operate a motor vehicle on behalf of the carrier to transport tobacco, and no driver shall operate a motor vehicle on behalf of a carrier to transport tobacco, unless the driver has in his or her possession a bill of lading showing the origin and destination of the tobacco. *2007,c.19,s.18.*

19. Importation of tobacco limit

- (1) No person shall bring tobacco, or cause tobacco to be brought, into the province from outside the province in an amount greater than two hundred grams, unless the person is
- (a) a licensed wholesale vendor;
 - (b) the holder of a marking permit;
 - (c) the holder of a marking exemption permit; or
 - (d) a carrier, or an employee or agent of a carrier, acting under a contract for the transport of the tobacco.

No tax payable

- (2) No tax is payable by a person who brings tobacco, or causes tobacco to be brought, into the province from outside the province for his or her personal consumption in an amount not exceeding 200 grams. *2007,c.19,s.19.*

20. Possession of unmarked tobacco by consumer

- (1) No consumer shall have in his or her possession unmarked tobacco unless no tax is payable under this Act in respect of the purchase of that tobacco.

Possession of unmarked tobacco for sale

- (2) No person shall be in possession of unmarked tobacco for the purpose of sale unless the person holds a valid marking exemption permit.

Sale of unmarked tobacco

- (3) No person shall sell or offer to sell unmarked tobacco unless no tax is payable under this Act in respect of the purchase of that tobacco.

Marking package of tobacco

- (4) No person shall mark a package of tobacco unless the person
- (a) holds a valid marking permit; and
 - (b) marks the tobacco in accordance with the regulations. *2007,c.19,s.20.*

21. Tobacco marking

No person shall, except in accordance with the regulations, purchase, possess, store, distribute, manufacture, or sell or offer to sell tobacco markings for use in the province unless the person holds a valid marking permit. *2007,c.19,s.21; 2010,c.29,s.2.*

21.1 Excise stamps, penalty for missing stamps

- (1) Every manufacturer or wholesaler licensed under the Act who is issued excise stamps as defined under section 2 of the *Excise Act, 2001* (Canada), is liable to pay a penalty and, when assessed for it by the Commissioner, shall pay the penalty to the Minister, if the manufacturer or wholesaler cannot, on the request of an inspector or other person conducting an audit or inspection under the *Revenue Administration Act*, account for any such excise stamp as being in the manufacturer's or wholesaler's possession, unless the manufacturer or wholesaler can demonstrate to the satisfaction of the inspector or other person making the request
- (a) that
 - (i) the manufacturer or wholesaler has affixed the excise stamp to tobacco in the manner prescribed in the regulations, and
 - (ii) that the tax has been paid on the tobacco to which the excise stamp was affixed; or
 - (b) that the excise stamp was returned to its issuer, or destroyed, as directed by the Minister of National Revenue for Canada.

Penalty amount

- (2) The amount of the penalty for each excise stamp issued to the wholesaler or manufacturer that cannot be accounted for is equal to the tax that would be imposed on tobacco for which the excise stamp was issued. *2013, c.51, s.2.*

ENFORCEMENT

22. Proceeds

- (1) In this section and in sections 23 and 24, "**proceeds**", in relation to an offence under this Act or the regulations, means
- (a) personal property, other than money, derived in whole or in part, directly or indirectly, from the commission of the offence; and
 - (b) money derived directly or indirectly from the commission of the offence.

Seizure during inspection and audit

- (2) Where, under subsection 18(1) of the *Revenue Administration Act*, the Commissioner or an inspector enters upon any premises or place where any business is carried on and discovers that the owner or manager of the property or business or any other person on the premises or place is in possession of tobacco or tobacco markings, the Commissioner or the inspector may, subject to section 26, seize, take away, impound, hold and dispose of the tobacco or tobacco markings if the Commissioner or inspector, as the case may be, has reasonable and probable grounds to believe that the possession is contrary to this Act or the regulations.

Entry and search

- (3) Where an inspector believes, on reasonable grounds, that there is in any premises, or in or on any motor vehicle, vessel or aircraft, anything
- (a) that was used or is being used in connection with a contravention of this Act or the regulations;
 - (b) that will afford evidence relevant to a contravention of this Act or the regulations; or
 - (c) that is the proceeds from the commission of an offence under this Act or the regulations,



the inspector may, with a warrant issued under subsection (5),

- (d) enter and search the premises, motor vehicle, vessel or aircraft;
- (e) open any container or package that the inspector believes, on reasonable grounds, contains any thing that will provide evidence with respect to a contravention of this Act or the regulations;
- (f) request the production for inspection of documents or things that may be relevant to the search;
- (g) inspect and, upon giving a receipt therefor, remove, for the purpose of making copies or extracts, documents or things relevant to the search;
- (h) conduct such tests as are reasonably necessary;
- (i) remove materials or substances for examination or test purposes subject to the occupier of the premises, or the operator of the motor vehicle, vessel or aircraft, being notified thereof; and
- (j) seize, take away, impound and hold anything, including tobacco, tobacco markings, documents, computers, money and any motor vehicle, vessel or aircraft, that the inspector believes, on reasonable grounds,
 - (i) was used or is being used in connection with a contravention of this Act or the regulations,
 - (ii) will afford evidence relevant to a contravention of this Act or the regulations, or
 - (iii) is proceeds from the commission of an offence under this Act or the regulations.

Entry to dwelling -houses

- (4) Subsection (3) does not apply to confer a power to enter and search a dwelling-house without the consent of the occupier unless a warrant issued under subsection (5) authorizes the entry and search.

Warrant

- (5) A justice of the peace may issue a warrant authorizing the inspector named in the warrant
 - (a) to do anything set out in subsection (3) but not to enter and search a dwelling-house; or
 - (b) to enter and search a dwelling-house and to do anything therein as set out in subsection (3).

Requirements

- (6) A warrant may be issued under subsection (5) to an inspector if the justice of the peace is satisfied, on information under oath, that,
 - (a) in the case of a warrant to be issued under clause (5)(a), there is in the premises, or in or on any motor vehicle, vessel or aircraft, anything that there are reasonable grounds to believe
 - (i) was used or is being used in connection with the contravention of this Act or the regulations,
 - (ii) will afford evidence relevant to the contravention of this Act or the regulations, or
 - (iii) is proceeds from the commission of an offence under this Act or the regulations; or

- (b) in the case of a warrant to be issued under clause (5)(b), it is necessary that a dwelling-house be entered for the purposes of carrying out a search or there is, in a dwelling-house, anything that there are reasonable grounds to believe anything
 - (i) was used or is being used in connection with a contravention of this Act or the regulations,
 - (ii) will afford evidence relevant to a contravention of this Act or the regulations, or
 - (iii) is proceeds from the commission of an offence under this Act or the regulations.

Execution of warrant

- (7) A warrant issued under this section shall specify the hours and days during which it may be executed.

Expiry

- (8) Unless renewed, a warrant under this section expires not later than 30 days after the date on which it is issued.

Notice

- (9) A warrant under this section may be issued or renewed before or after expiry upon application without notice.

Renewal

- (10) A warrant under this section may be renewed for any reason for which it may be issued.

Where warrant not necessary

- (11) Notwithstanding subsection (3), an inspector may exercise the power of search referred to in that subsection without a warrant issued under subsection (5) where the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

Exigent circumstances

- (12) For the purposes of subsection (11) and section 23, “exigent circumstances” include circumstances in which the delay necessary to obtain a warrant would result in danger to human life or safety or the loss or destruction of evidence. *2007,c.19,s.22; 2010,c.29,s.3.*

23. Stopping and detention of motor vehicles etc.

- (1) Where an inspector believes, on reasonable grounds,
 - (a) that there is in or on a motor vehicle, a vessel or an aircraft anything that
 - (i) was used or is being used in connection with a contravention of this Act or the regulations,
 - (ii) will afford evidence relevant to a contravention of this Act or the regulations, or
 - (iii) is proceeds from the commission of an offence under this Act or the regulations; and
 - (b) it is not practical by reason of exigent circumstances to obtain a warrant under subsection 22(5),the inspector may, without a warrant,
 - (c) stop, detain, enter and search the motor vehicle, vessel or aircraft;



- (d) examine its contents, including any cargo, manifests, bills of lading, records, accounts, vouchers, papers or other documents that may afford evidence as to the contravention; and
- (e) subject to subsection (2), seize and take away any of the manifests, records, accounts, vouchers, papers or other documents and retain them until they are produced in a court proceeding.

Application for detention of documents

- (2) The inspector who seizes documents pursuant to subsection (1) shall, within 14 days of the seizure, make application to a justice of the peace for an order to permit the retention of the documents until they are produced in a court proceeding, and the application may be heard by and the order may be made, both without notice, upon receipt of information under oath from an inspector who believes, on reasonable grounds, that the documents afford evidence of a contravention of this Act or the regulations.

Person in charge of vehicle

- (3) Where an inspector, pursuant to subsection (1), requests or signals the person in charge of or operating a motor vehicle, a vessel or an aircraft to stop, the person shall immediately bring the motor vehicle, vessel or aircraft, as the case may be, to a safe stop.

Assistance

- (4) Where an inspector stops a motor vehicle, a vessel or an aircraft, the person in charge of or operating the motor vehicle, vessel or aircraft, as the case may be, shall
 - (a) give the inspector all reasonable assistance in the entry and search of the motor vehicle, vessel or aircraft; and
 - (b) make reasonable efforts to provide all information that the inspector may reasonably require for purposes of the administration and enforcement of this Act and the regulations.

Application of section 22 in respect of vehicle stopped and detained

- (5) Nothing in this section shall be construed to restrict or otherwise affect the application of section 22 in respect of the search of, or the seizure of or the seizure of anything from, any motor vehicle, vessel or aircraft that is stopped, detained, entered and searched under this section. *2007, c.19, s.23.*

24. Possession of Proceeds

No person shall knowingly possess the proceeds of an offence under this Act or the regulations. *2007, c.19, s.24.*

25. Report of seizure

- (1) Where an inspector seizes tobacco or any other thing under section 22 or 23, the inspector must promptly report in writing to the Commissioner the particulars of the seizure as soon as practicable but no later than 10 days after the seizure.

Liability for loss or detention

- (2) Her Majesty in right of the province, or any inspector acting under the authority of this Act or the regulations, is not liable for any loss or damage arising from the deterioration or destruction of anything that is seized, taken away, detained or held under this Act. *2007, c.19, s.25.*

26. Forfeiture if no application for restoration

- (1) Anything seized under this Act is forfeited to Her Majesty in right of the province unless, within 30 days following the seizure, the person from whom the thing was seized, or the owner of the thing, applies to the Supreme Court to establish the right to possession of the thing.

Right to possession

- (2) For the purpose of an application under subsection (1), the applicant has the right to possession of the thing seized if the possession did not, at the time the seizure was made, constitute a contravention of this Act or the regulations.

Restoration order

- (3) On an application made under subsection (1), the Supreme Court may order that the thing seized be restored forthwith to the applicant if the court is satisfied that
- (a) the applicant is entitled to possession of the thing seized;
 - (b) the thing seized is not required as evidence in any proceeding;
 - (c) continued detention of the thing is not necessary to prevent the commission of an offence; and
 - (d) it is unlikely that the thing would be forfeited upon conviction under subsection (6).

Idem

- (4) If the court is satisfied that an applicant is entitled to possession of the thing seized but is not satisfied as to all of the matters mentioned in clauses (3)(a) to (d), the court shall order that the thing seized be restored to the applicant,
- (a) upon the expiration of three months from the date of the seizure, if no proceeding in respect of an offence has been commenced; or
 - (b) upon the final conclusion of any such proceeding, subject to subsection (6).

Forfeiture if not restored on application

- (5) If an application has been made for the return of any thing seized under this Act, but upon the hearing of the application no order is made by the court under subsection (3) or (4), the thing seized is forfeited to Her Majesty in right of the province.

Forfeiture on conviction

- (6) If a person is convicted of an offence under this Act or the regulations, the court shall order that any thing seized in connection with the offence be forfeited to Her Majesty in right of the province, unless the court concludes that such forfeiture would be unjust in the circumstances.

Relief against forfeiture

- (7) Any person with an interest in a thing forfeited under this section may apply to the Supreme Court for relief against forfeiture, and the court may make an order providing for any relief that it considers just, including, but not limited to, one or more of the following orders:
- (a) an order directing that the thing be returned to the applicant;
 - (b) an order directing that any interest in the thing be vested in the applicant;
 - (c) an order directing that an amount be paid by Her Majesty in right of the province to the applicant by way of compensation for the forfeiture.



Idem

- (8) The court shall not order any relief under subsection (7) unless the court is satisfied that the applicant did not, directly or indirectly, participate in, or benefit from, any offence in connection with which the thing was seized.

Disposal

- (9) Any tobacco or other thing that is forfeited under this Act to Her Majesty in right of the province shall be disposed of as the Minister directs.

Proceeds

- (10) The proceeds from the sale of anything that is directed to be sold by the Minister under subsection (9) shall, after payment of the costs incurred in seizing, impounding, holding and disposing of the thing, be paid into the Operating Fund. *2007, c.19, s.26.*

27. Admissibility of copies

- (1) Copies of, or extracts from, documents, computers or other things removed under section 22 or 23 and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents, computers or other things.

Power of court to infer

- (2) The judge of a court trying a prosecution for a contravention of this Act or the regulations may infer, in the absence of proof to the contrary, that a substance in question is tobacco by the substance's appearance, packaging or odour, or from the fact that a witness describes the substance as tobacco.

Onus

- (3) In any prosecution for the failure to pay the tax, the onus of proving the tax was paid is on the defendant.

Possession of tobacco by one of two or more persons

- (4) In any prosecution for a contravention of subsection 14(3), section 16 or section 20, where one of two or more persons, with knowledge and acquiescence of the rest, has tobacco in the person's possession, the tobacco shall be, in the absence of evidence to the contrary, considered to be in the possession of each and all of them. *2007, c.19, s.27.*

OFFENCES AND PENALTIES

28. Offences respecting contravention of certain sections

- (1) Every person who contravenes section 2, 12, 13, 14, 15, 16, 17, 18, 19, 20 or 21 of this Act is guilty of an offence and liable on summary conviction
- (a) for a first offence, to
 - (i) a fine of not less than \$200 and not more than \$10,000,
 - (ii) imprisonment for a period of not more than two years, or
 - (iii) both a fine and imprisonment;
 - (b) for a second offence, to
 - (i) a fine of not less than \$500 and not more than \$50,000,

- (ii) imprisonment for a period of not more than two years, or
- (iii) both a fine and imprisonment; and
- (c) for a third or subsequent offence, to
 - (i) a fine of not less than \$1,000 and not more than \$100,000,
 - (ii) imprisonment for a period of not more than two years, or
 - (iii) both a fine and imprisonment.

Additional penalty

- (2) In addition to the penalties which are imposed under subsection (1), a court shall order the person found guilty of an offence under this section to pay an additional fine equal to five times the amount of the tax that would have been payable on the tobacco in respect of which the offence was committed if it had been purchased by a consumer liable to pay tax under section 2.

Imprisonment

- (3) In addition to the fines imposed under subsections (1) and (2), a court shall order a person who defaults in the payment of those fines to be imprisoned for a period of not less than one month and not more than six months and that period of imprisonment shall be in addition to any other period of imprisonment imposed under this section. *2007,c.19,s.28.*

29. Penalty

Every person who contravenes a provision of this Act or the regulations for which no other penalty is provided under this Act or the regulations is guilty of an offence and is liable on summary conviction

- (a) for a first offence, to
 - (i) a fine of not less than \$200 and not more than \$10,000,
 - (ii) imprisonment for a term of not more than six months, or
 - (iii) both a fine and imprisonment;
- (b) for a second offence, to
 - (i) a fine of not less than \$500 and not more than \$10,000,
 - (ii) imprisonment for a term of not more than six months, or
 - (iii) both a fine and imprisonment; and
- (c) for a third or subsequent offence, to
 - (i) a fine of not less than \$1,000 and not more than \$10,000, or
 - (ii) imprisonment for a term of not less than two weeks and not more than six months. *2007,c.19,s.29.*

30. Separate offence

- (1) Every contravention of this Act or the regulations that relates to a separate sale, purchase or transaction constitutes a separate offence.

Effect of fine or penalty

- (2) The imposition of a penalty on a person under section 28 or 29 does not suspend or affect any remedy available against the person for the recovery of any tax or amount payable under this Act.



Payment of fines to Minister

- (3) Fines collected under this Act and the regulations must be paid to the Minister on behalf of Her Majesty in right of the province and must be paid into the Operating Fund. *2007, c.19, s.30.*

31. Liability of officers of corporations

- (1) Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, or acquiesced or participated in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted of any offence under this Act or the regulations.

Corporation's liability for offence not relieved

- (2) Nothing in subsection (1) relieves the corporation that committed an offence under this Act or the regulations for liability therefor.

Act or omission of officers act or omission of corporation

- (3) In construing and enforcing this Act, the act, omission, neglect or failure of an officer, director, employee or agent of a corporation, acting within the scope of his or her employment or instructions, is the act, omission, neglect or failure of the corporation. *2007, c.19, s.31.*

GENERAL**32. Service of notices & requests**

- (1) A notice or request required to be served on a person, other than the Commissioner, under this Act and the regulations is sufficiently served if it is
- (a) delivered personally to the person; or
 - (b) sent to the person by registered mail addressed to the person at the latest address appearing on the records of the Minister.

Service on Commissioner

- (2) A notice is sufficiently served on the Commissioner under this Act and the regulations if it is delivered to the office of the Commissioner or sent by registered mail addressed to the Commissioner.

Service by registered mail

- (3) Where any notice or request referred to subsection (1) or (2) is served on a person by registered mail, the service shall be deemed to be made on the third day after the date of mailing. *2007, c.19, s.32.*

33. Regulations

The Lieutenant Governor in Council may make regulations

- (a) respecting licenses and permits, including providing for
 - (i) the fees payable for the issuance of any license or permit,
 - (ii) the requirements for obtaining any license or permit,
 - (iii) the term or date of expiry of any license or permit, and

- (iv) the deemed expiry of any license or permit on the occurrence of a prescribed event or action;
- (b) respecting the keeping of records by licensed wholesale vendors and licensed retail vendors, including
 - (i) requiring the keeping of records by such vendors,
 - (ii) prescribing the information such records are to contain, and
 - (iii) prescribing the length of time that such records shall be kept;
- (c) respecting the making or provision of returns and statements to the Commissioner, and the information to be supplied therein, by a person who holds a license or permit;
- (d) respecting the marking of the packages in which tobacco is sold before or at the time of delivery to a customer as evidence of the tax having been paid;
- (e) prohibiting the delivery to a consumer and the taking of delivery by a consumer of unmarked tobacco;
- (f) governing the activities, and prescribing the responsibilities, of licensed wholesale vendors and licensed retail vendors;
- (g) governing the activities, and prescribing the responsibilities, of persons who hold a marking permit or a marking exemption permit;
- (h) respecting the purchase, possession, storage, distribution, manufacture and sale of tobacco markings;
- (i) restricting the giving of tobacco as a premium or prize or otherwise unless the tax has been paid;
- (j) establishing or providing for the determination of the retail price of a cigar;
- (k) respecting the refund or rebate of the tax, including the conditions under which a refund or rebate may be made, the time within which an application for a refund or rebate must be made, the manner of making such an application and the evidence to be furnished in support of the application;
- (l) prescribing the fine or range of fines that a person is liable to on summary conviction in respect of the contravention of a provision of this Act, other than one referred to in section 28, or a provision of the regulations;
- (m) exempting from tax tobacco sold for resale that is delivered or shipped to a destination outside the province;
- (n) respecting the transportation of tobacco in the province;
- (o) respecting the forms to be used for the purposes of this Act and the regulations;
- (p) prohibiting the doing of any act which may be in contravention of the spirit of this Act;
- (p.1) defining “tobacco markings” for the purposes of this Act and the regulations;
- (q) defining any word or expression used in this Act and not herein defined;
- (r) requiring the doing of any act that the Lieutenant Governor in Council considers necessary or expedient for the collection of the tax or to prevent evasion thereof; and
- (s) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purposes of this Act. *2007, c.19, s.33; 2010, c.29, s.4.*

